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September 1, 1981

Dear :

This is in response to your letter of July 14, 1981, to Mr. Glenn Rigby, regarding our interpretation of Proposition 13 as it applies to a proposed transfer of real property from an individual to a limited partnership. Although you have not included any specific partnership agreement or other documents relative to the transaction, your letter states generally that you propose the following:

1. You client (assuming a single individual) proposes to transfer property (assuming a single parcel) to a limited partnership.

2. Your client (assumed to be the general partner) proposes to contribute the property at a value frozen as of the date of the transfer. Further, your client proposes to contribute on behalf of his children (assumed to be the limited partners) the value increase of the property after the date of the transfer.

If, in fact, as a result of the above actions a limited partnership has been created under the Uniform Limited Partnership Act (Corporations Code, Sections 15501, et seq.), then for purposes of Proposition 13, the Legislature generally has treated such partnerships as legal entities, separate and apart from the individual partners. In this regard, prior to January 1, 1981, the law provided that the transfer of any interest to a partnership constituted a change in ownership of such property (Revenue and Taxation Code, Section 61(i)). However, operative January 1, 1981, and effective beginning with the 1981-82 assessment year, the Legislature amended Section 62(a) of the Code to exclude from the definition of change in ownership any transfer of title between an individual and a legal

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entity, "such as a co-tenancy to a partnership, . . . which results solely in a change in the method of holding title and in which the proportional interests by the transferors and transferees, whether represented by stock, partnership interest, or otherwise, remain the same after the transfer". (Emphasis added.)

In your proposed transaction, a single individual holding fee title to property transfers such property to a limited partnership. A limited partnership, as defined in part by Section 15501 of the Corporations Code is "a partnership formed by two or more persons". Hence, by definition, we are of the opinion that a transfer by a sole owner of property to a partnership is not excluded under the provision of Section 62(a) of the Revenue and Taxation Code, since each partner has an interest in the partnership which now holds the title to the property. In support of this interpretation, is the language employed in Section 62(a) by way of example: "such as a co-tenancy to a partnership;" such language suggests that the Legislature contemplated that two or more co-owners are required to be the transferors of property to a partnership in order to be excluded.

We believe that the fact that the limited partners (children) are only to receive the increased value, if any, of the property after the transfer to be immaterial. We would reach the same conclusion if the limited partners were only entitled to receive the income from the property. In either case, such partners would receive nothing if the partnership were terminated immediately following formation and your client received the property back. Rather, resolution of the issue turns on the fact that prior to the proposed transfer there is a single owner of the property and afterwards there is ownership of such property by a partnership in which two or more persons have partnership interests.

In conclusion, it is our opinion that the proposed transaction is not excluded under Section 62(a) and, therefore, is included as a change in ownership pursuant to Section 61(i).

Very truly yours,

Margaret S. Shedd
Tax Counsel

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